

#### § 1.6015-4

erroneous items that are subject to tax at different rates (e.g., ordinary income and capital gain items), the deficiency will be allocated after first separating the erroneous items into categories according to their applicable tax rate. After all erroneous items are categorized, a separate allocation is made with respect to each tax rate category using the proportionate allocation method of paragraph (d)(4) of this section.

(ii) *Allocation methods provided in subsequent published guidance.* Additional alternative methods for allocating erroneous items under section 6015(c) may be prescribed by the Treasury and IRS in subsequent revenue rulings, revenue procedures, or other appropriate guidance.

(iii) *Example.* The following example illustrates the rules of this paragraph (d)(6):

*Example. Allocation based on applicable tax rates.* H and W timely file their 1998 joint Federal income tax return. H and W divorce in 1999. On July 13, 2001, a \$5,100 deficiency is assessed with respect to H's and W's 1998 return. Of this deficiency, \$2,000 results from unreported capital gain of \$6,000 that is attributable to W and \$4,000 of capital gain that is attributable to H (both gains being subject to tax at the 20% marginal rate). The remaining \$3,100 of the deficiency is attributable to \$10,000 of unreported dividend income of H that is subject to tax at a marginal rate of 31%. H and W both timely elect to allocate the deficiency, and qualify under this section to do so. There are erroneous items subject to different tax rates; thus, the alternative allocation method of this paragraph (d)(6) applies. The three erroneous items are first categorized according to their applicable tax rates, then allocated. Of the total amount of 20% tax rate items (\$10,000), 60% is allocable to W and 40% is allocable to H. Therefore, 60% of the \$2,000 deficiency attributable to these items (or \$1,200) is allocated to W. The remaining 40% of this portion of the deficiency (\$800) is allocated to H. The only 31% tax rate item is allocable to H. Accordingly, H is liable for \$3,900 of the deficiency (\$800 + \$3,100), and W is liable for the remaining \$1,200.

[T.D. 9003, 67 FR 47285, July 18, 2002]

#### § 1.6015-4 Equitable relief.

(a) A requesting spouse who files a joint return for which a liability remains unpaid and who does not qualify for full relief under § 1.6015-2 or 1.6015-3 may request equitable relief under

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this section. The Internal Revenue Service has the discretion to grant equitable relief from joint and several liability to a requesting spouse when, considering all of the facts and circumstances, it would be inequitable to hold the requesting spouse jointly and severally liable.

(b) This section may not be used to circumvent the limitation of § 1.6015-3(c)(1) (i.e., no refunds under § 1.6015-3). Therefore, relief is not available under this section to obtain a refund of liabilities already paid, for which the requesting spouse would otherwise qualify for relief under § 1.6015-3.

(c) For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2000-15 (2000-1 C.B. 447), or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

[T.D. 9003, 67 FR 47285, July 18, 2002]

#### § 1.6015-5 Time and manner for requesting relief.

(a) *Requesting relief.* To elect the application of § 1.6015-2 or 1.6015-3, or to request equitable relief under § 1.6015-4, a requesting spouse must file Form 8857, "Request for Innocent Spouse Relief" (or other specified form); submit a written statement containing the same information required on Form 8857, which is signed under penalties of perjury; or submit information in the manner prescribed by the Treasury and IRS in forms, relevant revenue rulings, revenue procedures, or other published guidance (see § 601.601(d)(2) of this chapter).

(b) *Time period for filing a request for relief—(1) In general.* To elect the application of § 1.6015-2 or 1.6015-3, or to request equitable relief under § 1.6015-4, a requesting spouse must file Form 8857 or other similar statement with the Internal Revenue Service no later than two years from the date of the first collection activity against the requesting spouse after July 22, 1998, with respect to the joint tax liability.

(2) *Definitions—(i) Collection activity.* For purposes of this paragraph (b), collection activity means a section 6330 notice; an offset of an overpayment of